***THE HON'BLE SRI JUSTICE G. CHANDRAIAH**

+ W.P.No.9303 of 1994

%Dated 11.08.2005

Smt. Yarlagadda Padmavathi,

S/o.Dr.Rahul A.Shastri,

R/o.H.No.5-9-22/21, Adarshanagar,

Hyderabad – 500 483.

.. Petitioner

Vs.

$ The Director of School Education,

Andhra Pradesh, Hyderabad – 500 004 and

others

.. Respondents

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>HEAD NOTE:

! Counsel for the Petitioner: Smt.M.Vinobha Devi

^Counsel for the Respondents 1to 4: G.P. for School Education

? Cases referred

1. AIR (37) 1950 MADHYA BHARAT 46

2. ESC (SC) 33

3. 1981(2) An.W.R.241

4. 2004(30) ALD 449 (F.B.)

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HONOURABLE SRI JUSTICE G. CHANDRAIAH

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W.P.No.9303 of 1994

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ORAL ORDER:

This writ petition is filed seeking for issue of writ of Mandamus directing to the respondents to correct the petitioner's date of birth as 22.8.1959 from 1.8.1957 in the Secondary School Certificate and other connected records as per the judgment and decree in O.S.No.377 of 1983 by declaring the Proceedings in L.Dis.No.2996/H5/83, dated 10.1.1994 and L.Dis.No.2996/H5/83, dated 24.3.1994 issued by the Director of school Education as illegal and unsustainable.

The facts relevant for appreciating the controversy may be briefly stated as follows:

The petitioner is a practising advocate. Her date of birth was wrongly entered in school records as 1.8.1957 instead of 22.8.1959. She filed O.S.No.377 of 1983 on the file of the Principal District Munsif, Chirala, arraying the respondents 3 to 5 herein as defendants 1 to 3 therein, seeking declaratory relief and consequential mandatory injunction directing the defendants to correct the date of birth in school register. The suit was decreed on 22.4.1986 in favour of the petitioner declaring her date of birth as 22.8.1959 and directed the defendants by way of mandatory injunction to correct the date of birth in the relevant records.

In pursuance of the Notification, dated 12.7.1993 issued by the Osmania University, she applied for regular post of Lecturer post in the faculty of law. She would be age-barred for this post unless her age is corrected in her S.S.C.L. records as per judgment and decree passed by the trial Court. She made applications on 1.2.1993 and 29.12.1993 to the 1st respondent requesting for correction of date of birth pursuant to the judgment delivered by the civil Court. In response to that the 1st respondent issued communication in L.Dis.No.2996/H5/83, dated 10.1.1994 informing that the judgment, dated 22.4.1986 in O.S.No.377 of 1983 will not be binding on the Government as neither the Director of School Education nor the Secretary to Government Education Department has been impleaded as party in the suit as clarified by the Government vide their Memo No.1477/EE.1/89-1/Edn., dated 2.4.1990. In response to her further representation, dated 22.1.1994, the 1st respondent issued clarification letter, dated 24.3.1994 informing her that since 23.2.1988, Director of School Education was competent for alternation of date of birth in respect of Court Cases also. Prior to that the Government was competent in such matters. When the competent authority is not impleaded as a party in the suit, it will not be binding on him to implement the judgment. Hence, this writ petition

has been filed.

The respondents filed counter affidavit *inter alia* denying the averments made in the affidavit filed in support of the writ petition and stated that the petitioner completed her S.S.L.C. during April, 1972. A declaration was given by her parents as to the date of birth at the time of opening the S.S.L.C. Register, while the petitioner was studying VIII class. Neither the parent nor the petitioner did utilize the opportunity to change the date of birth at the time of opening the S.S.L.C Register. As per Rule 97(4) of A.P. Education Rules, the declaration given by the parents with regard to the date of birth at the time of admission into secondary school is final and it will not be altered at a later stage. The petitioner was admitted into VI class during 1967 in Y.N.O. High School, Karemchedu. As per Rule 46 of A.P. Education Rules, one should be 10+ years for admission into VI class as on 31st August of the academic year in which the pupil was admitted. Since the petitioner was satisfied with the age rule, she was admitted into school with her date of birth mentioned as 1.8.1957. If the proposed date of birth i.e. 22.8.1959 had been given by the parent, the petitioner's admission into VI class would have been rejected by the Headmaster, as she would be under-aged for admission into VI class. The date of birth entered in SSLC register cannot be changed without following the procedure laid down in G.O.Ms.No.1263/Edn., dated 6.5.1961 read with G.O.Ms.898/Edn., dated 29.8.1977 and G.O.Ms.No.917/Edn., dated 6.9.1977. According to the existing procedure, during 1983, the parent or the candidate himself has to apply/submit proposals to the Director of School Education through the District Educational Officer (or Headmaster of the school in which she studied) for change of date of birth, but the said procedure was not followed by the petitioner and her allegations that she had approached the appropriate authorities is baseless. No application for correction of date of birth can be entertained after 3 years of completion of S.S.L.C. as per the orders issued in G.O.Ms.No.898/Edn., dated 29.8.1977. Without following the rules and procedure for alteration of date of birth, the petitioner

filed O.S.No.377 of 1983 impleading the respondents 1 to 3 as parties. The suit was decreed on 22.4.1986. The said orders have not been received in the office of the 1st respondent as the Director of School Education is not a party in the suit. The petitioner never approached the defendants to get implemented the orders issued in the judgment, dated 22.4.1986 for correction of her date of birth, but kept quite from 22.4.1986 to 31.1.1993 and submitted an application only on 1.2.1993 to the 1st respondent requesting for correction of her date of birth pursuant to the judgment in the suit. In response to the said representation, the impugned letters have been issued which are only a communication and they are not orders of the 1st respondent. Therefore, the said communication is proper in accordance with law and does not call for interference of this Court under Article 226 of the Constitution of India.

Heard the learned counsel for the petitioner and the learned Government Pleader for School Education appearing for the respondents 1 to 4 and perused the material placed on record.

The learned counsel for the petitioner has vehemently contended that the judgment delivered by the competent civil Court declaring the petitioner's date of birth as 22.8.1959 instead of 1.8.1957 is binding on the respondents and she is entitled to the correction of date of birth in her school records. The 1st respondent issued the impugned letters without applying his mind and they are arbitrary and illegal and the claim of the petitioner cannot be rejected on the ground that the respondents 3 to 5 are not parties in the suit and the judgment rendered is not binding on them. It is also submitted that the petitioner's date of birth has been entered into register of the Bar Counsel of A.P. at the time of enrolment as 22.8.1959, and she also obtained passport with the same date of birth.

On the other hand, the learned Government Pleader for School Education has contended that the petitioner stated to have secured first rank in L.L.M. in 1992 from Osmania University and obtained three Gold Medals. She is also a practising advocate. Even though

she obtained judgment in O.S.No.377 of 1983, dated 22.4.1986, she could not put any efforts by making any application to get the judgment implemented for rectification of her date of birth till 1.2.1993. Further, according to the prescribed rules, the date of birth entered in SSLC register is final and cannot be changed at the subsequent dates. The date of birth entered in the Bar Council records and the passport shall not be the basis for alteration of date of birth in the school records. He has further contended that on the face of it, her request for correction of date of birth is obviously false because she was admitted to VI class in 1967. As per Rule 46 of A.P. Education Rules, one should be 10+ years for admission to VI class as on 31st August of the academic year in which she was admitted. Since the petitioner was not satisfied with the age rule, she was admitted to school with date of birth stated as 1.8.1957. If the proposed date of birth i.e. 22.8.1959 had been given by the parents, the petitioner's admission into VI class would have been rejected by the Head Master as she would be under-aged for admission into VI class. It is further contended that in view of the same and in response to her belated representation requesting the 1st respondent for alteration of her date of birth pursuant to the judgment in the suit, the 1st respondent issued the impugned letters which are merely a communication but not orders, therefore, the said proceedings do not suffer from any legal infirmity and the petitioner is not entitled to any relief sought for. The prayer in the writ petition is nothing but seeking implementation of the judgment, dated 22.4.1986 in O.S.No.377 of 1983 by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, the writ petition is not maintainable and is liable to be dismissed.

In view of the contentions raised by both the counsel, the following issues fall for consideration.

1. *Whether the petitioner is entitled to seek relief for alteration of her date of birth as 22.8.1959 by implementing the judgment of the civil Court under Article 226 of the Constitution of India?*

2. *Whether the impugned proceedings issued by the 1st respondent suffer from any legal infirmity?*

The Government issued G.O.Ms.No.1263, dated 6.5.1961. The relevant rules of the G.O. read as under:

1. *An application for the correction of the date of birth in a completed Secondary School-Leaving Certificate, Higher Secondary Certificate or Higher Secondary (Multipurpose) Certificate shall be addressed to the Government through the Director of school Education and the Head of the school in which the person to whom the application relates last studied.*

2. *The application may be preferred by the person concerned or by his or her father or mother, or by his or her guardian, if both the parents are not alive.*

3. *An application for the correction of date of birth shall be accompanied by the following documents:*

   a. *An extract from the Birth Register of the Village or Municipality or Corporation concerned relating to every one of all the children born to the parents including the person whose date of birth is sought to be corrected.*

   b. *A sworn declaration (in the form prescribed in Annexure (I) of the father or the mother or guardian, if both the parents are not alive, to the effect that the birth extract containing the date of birth of his or her son/daughter/ward relates to him or her only and to none else.*

   c. *Another sworn declaration (in the form*

prescribed in Annexure II) of the father or mother or guardian, if both the parents are not alive, indicating the total number of children (both alive and dead) born to the same parents furnishing their full names and dates of birth.

d. *The Secondary School Leaving Certificate or the Higher Secondary Certificate or Higher Secondary (Multipurpose) Certificate in original.*

e. *A certified extract of the entries made in the Register of Admissions of the school/concerned containing the entries relating to the name, surname, name of parent or guardian and date of birth of the person.*

f. *The original transfer certificate or record sheet produced by the person at the time of his or her admission, if available in the school records.*

4. *The sworn declarations mentioned in Clauses (b) and (c) of Rule 3 above shall be attested by Gazetted Officer affixing the official seal of his office.*

5. *If, however, an applicant is not able to produce a copy of the birth extract relating to him or to any of his brothers or sisters or if any of the documents referred to in Rule 3 above are not forthcoming, the applicant may submit his or her application stating the reasons as to why they are not available.*

6. *On receipt of the application with the documents mentioned in clauses (a) to (d) of Rule 3 above (if available) the Head of the school shall after enclosing the document in original mentioned in*

clause (f) and the certified extract mentioned in clause (e) of the said rule (if available), submit it immediately to the Director of School Education through the District Educational Officer concerned.

7. *On receipt of the application with the documents mentioned in Para 5 above, the Director shall forward it to the Collector of the District in which the applicant was born, for enquiry and report.*

8. *The Collectors shall cause a detailed enquiry to be conducted, and shall have the facts of the case verified and investigated. He shall submit his recommendations along with the record of enquiry in original.*

9. *On receipt of Collectors report together with the original record of enquiry, the Director of School Education shall submit them, in original with his own recommendation to the government in the Education Department for orders.*

10. *Claims based merely on horoscopes shall under no circumstances be entertained.*

11. *The Director of School Education is empowered to entertain and effect corrections or Alterations in respect of the applications for correction or alteration of the Date of Birth in completed SSLC/HSC/HS(M)/SSC. However, no application for such correction/alteration of Date of Birth in the said completed certificates shall be entertained after a period of three years from the date of completion of the said course.*

The Government issued G.O.Ms.No.898/Edn., dated 29.8.1977 contemplating that no application for the correction of date of birth in completed Secondary School Leaving Certificate, Higher Secondary Certificate or Higher Secondary (Multipurpose) shall be entertained

after a period of three years from the date of completion of the said course. Subsequently, the Government issued G.O.Ms.No.1130, Education (I) Department, dated 28.9.1981 which reads as under:

> *Order:- The existing procedure for issue of orders in cases relating to Correction/Alteration of date of birth in S.S.L.C. Registers, S.S.Cs. etc. was prescribed in the year 1961, and it is found that this procedure is consuming much time i.e. 8 to 10 years in certain cases. The Director of School Education has suggested some revision of procedure to be followed.*
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> 2. *Government have examined this and directed that the following procedure be followed in such cases hereafter:*
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> *"The concerned candidates may submit their applications for alteration of date of birth in the certificates with all required documents through Head Master of the School where he last studied to the concerned Tahsildar, who in turn, after conducting enquiry sent the same to the Collector. The Collector shall send it to the Director of School Education with his specific remarks/recommendations. The Director of School Education or Government according to vested powers, will examine the admissibility of the case in respect of age and shall finalize it."*

The petitioner completed her S.S.L.C. in the year 1972 and the period of three years as contemplated under the rules, would be completing by 1975 within which the petitioner was to make an application to the competent authority seeking alteration of her date of birth. The affidavit does not disclose as to on what date initially, she made the applications to the authorities except the representations, dated 1.2.1993 and 29.12.1993 to the 1st respondent seeking implementation of the judgment in O.S.No.377 of 1983 and correction of date of birth in the school records. Under Rule-1 of G.O.Ms.No.1263, dated 6.5.1961, an application for correction of the date of birth in a completed Secondary School Leaving Certificate, Higher Secondary Certificate or Higher Secondary (Multipurpose) Certificate shall be addressed to the Government through the Director of School Education and the Head of the School in which the person to whom the application relates last studied. Rule-3 contemplates that the application for the correction of

date of birth shall be accompanied by certain documents referred to. Rule 11 contemplates that the Director of school Education is empowered to entertain and effect corrections or alterations in respect of the applications for correction or alteration of the Date of Birth in completed SSLC/HSC/HS(M)/SSC. However, no application for such correction/alteration of Date of Birth in the said completed certificates shall be entertained after a period of three years from the date of completion of the said course. (Substituted by G.O.Ms.No.430, Edn.).

The above decision was also reiterated in G.O.Ms.No.898, dated 29.8.1977 under Rule-1 of the said G.O. that no application for correction of date of birth in completed SSLC, Higher Secondary Certificate or Higher Secondary (Multipurpose) Certificate shall be entertained after a period of three years from the date of completion of the said course.

The learned counsel for the petitioner has contended that the petitioner got right to file a suit for declaration of her date of birth. Accordingly, she filed O.S.No.377 of 1983 which was decreed in her favour and the said judgment has become final and is binding on all the respondents since the Government was represented by the Collector-1st defendant in the suit. By virtue of the said judgment and decree, the petitioner is entitled to the correction of her date of birth. Therefore, this Court has got the power to direct the respondents to implement the judgment of the civil Court and consequentially to direct the respondents to alter the date of birth as per the said judgment.

On the other hand, the learned Government Pleader has contended that this Court cannot in its extraordinary jurisdiction under Article 226 of the Constitution of India direct the authorities for implementation of the judgment rendered by the Civil Court and consequentially alter the petitioner's date of birth. To qualify the above proposition, the learned Government Pleader relies on the judgment reported in ***Harendranadh Vs. State of M.B.*** wherein it was held to the following

effect:

> *"In this connection, I may refer to the decision of the Calcutta High Court in Keshav Prasadsingh v. Board of Revenue, 38 Cal. 553 (10.1.C.253). In that case, the plaintiff had obtained a decree for recovery of possession of an estate against an infant under the Court of Wards. After the suit was decreed by the trial Court, the defendant, the Court of Wards, preferred an appeal to the High Court. Pending the appeal, the plaintiff made an application to the Court of Wards for the release of the estate and for handing over possession of the estate to the plaintiff in accordance with the decree of the trial Court. The Court of Wards declined to comply with the plaintiff's request. Thereupon the plaintiff made an application to the Original Side of the Calcutta High Court under S.45, Specific Relief Act and obtained a rule calling upon the Court of Wards to show cause why they should not release the estate and hand over its possession to the plaintiff. In discharging the rule, the learned Judge of the Calcutta High Court observed:*
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> > *"It is an elementary principle that recourse ought not to be allowed to an extraordinary remedy of this description when it is not really needed. In the case before us, the plaintiff is entitled to sue in ejectment; he has brought such a suit and has been successful, he is entitled to execute his decree, but has not yet taken any steps in that direction. It is well settled that a mandamus will never be granted to enforce the general law of the land which may be enforced by action; for instance, where the applicant has the ordinary legal remedy of an execution, mandamus does not lie."*
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> *I agree with this observation and in my judgment, the applicant has so conducted himself as to preclude this Court from exercising in his favour the discretionary jurisdiction."*

Further, the learned Government Pleader has contended that in the similar circumstances, this court dismissed a W.P.No.2557 of 1995 by an order, dated 12.8.2004, wherein the prayer sought for by the petitioner therein was to direct the respondents to correct the date of birth of the petitioner as 17.11.1964 in S.S.L. Certificate in view of the judgment and decree passed in A.S.No.15 of 1988 by the Subordinate Judge and return the original S.S.L.C after making

necessary corrections. This Court, after considering the case, observed thus:

> *"As per the Rules issued by the government in G.O.Ms.No.898, dated 29.8.1977 for correction of date of birth, one has to approach the authorities concerned within three years from the date of issuance of certificate. Though the petitioner had passed S.S.C in the year 1977, he has approached the respondent in the year 1992 and that too on the basis of the judgment of the learned Subordinate Judge, Suryapet, Nalgonda, which judgment though declared the date of birth as 17.11.1964, however, there is no positive direction to correct the date of birth of the petitioner that was given to the officials of the Education Department. Therefore, no relief as prayed for by the petitioner can be given.*
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> *Accordingly, the writ petition is dismissed. No order as to costs."*

In view of the legal principles inferred and the factual position analysed above, I am of the view that the petitioner, having failed to avail the remedies available under law, is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for the purpose of implementation of a decree rendered by a civil Court. Therefore, the claim of the petitioner in this regard is negatived.

The learned Government Pleader placing reliance on the judgment of the Apex Court reported in ***State of M.P. Vs. Mohan Lal Sharma*** contended that the case of the petitioner that her date of birth is 22.8.1959 is axiomatically false as per the own statement of the petitioner, because she was admitted in VI class in the year 1967. He submitted that as per Rule 46 of A.P. Education Rules, one should be 10 + years, for admission to VI class as on 31st August of the academic year, in which he/she was admitted. He contended that assuming that the petitioner's date of birth is 22.8.1959, by the year 1967 i.e., in which year she was admittedly admitted into VI class, she would be only 7 years, which age is not at all sufficient for being admitted to VI class as per the Rules. It is also not the case of the petitioner that any special age relaxation was given to her by any

competent authority under law. He further contended that if the present date of birth i.e., 1.8.1957, which is sought to be altered, is taken into consideration, the age of the petitioner as on the date of her admission in VI class, would be exactly 10 + years as per Rule 46 of the Rules and therefore, she was admitted in VI class in the year 1967 with date of birth as 1.8.1957. Therefore, he contended that the date of birth entered in the SSLC register appears to be correct and the same cannot be altered.

I fully agree with the above logical contention of the learned Government Pleader.

The learned counsel for the petitioner relying on a judgment of a learned single judge of this court in ***Krishnamacharyulu Vs. Government of A.P.*** contended that since the limitation stipulated for making an application for alteration of date of birth under the rules does not bar the petitioner from approaching the civil court and obtaining a decree, the petitioner has approached the civil court and obtained the decree and the same is binding on the respondents and as such the respondents are bound to implement the decree passed by the civil court and consequently carry out the necessary alternation of the date of birth of the petitioner in school register. But the question is not with regard to the limitation for filing the application seeking alteration of date of birth or filing a suit and obtaining a decree. The question germane for consideration is whether this court under Article 226 of the Constitution of India can issue a mandatory direction to the respondents to implement the decree of a civil court, *de horse* the statutory rules. In my considered view, such a course is not proper and also open to this court.

The learned Government Pleader further contended that Rule 4 of A.P. Public Employment (Recording and Alteration of date of Birth) Rules, 1984 prohibits the alteration of date of birth entered in the service register on an employee. He contended that as per Rule 2-A of the said rules, the decree obtained by an employee for altering his date of birth as entered in the service register, is not binding on the

employer, even if the employer is a party before the civil court. He submitted that a Full Bench of this court in ***G.Krishna Mohan Rao v. Registrar, A.P. Administrative Tribunal, Hyderabad,*** on a reference, considering the above rule position, held that the direction of the Administrative Tribunal to alter the date of birth of a employee pursuant to a decree of civil court, is not sustainable.

As far as the second issue is concerned, the contention of the learned counsel for the petitioner is that the impugned proceedings issued by the 1st respondent on 10.1.1994 and 24.3.1994 is arbitrary and illegal. From the perusal of the proceedings dated 10.1.1994, it shows that it was issued in response to the letters dated 1.2.1993 and 29.12.1993 of the petitioner, informing the petitioner that judgment of the civil court in O.S.No.377/1983 is not binding on the Government, as neither the Director of School Education, nor the Secretary to Government, Education Department have been impleaded as parties in the suit, as clarified by the Government through Memo.No.1477/EE.1/89-1/Edn dated 2.4.1990. The other impugned proceedings dated 24.3.1994 was also in response to the representation of the petitioner. Through these proceedings, the 1st respondent reiterated the contents of the earlier proceedings dated 10.1.1994, and further stated that since 23.2.1988, 1st respondent i.e., the Director of School Education is the competent authority to alter the date of birth and prior to that the Government is competent in such matters and that no rules were framed as clarified in the Government memo dated 2.4.1990. A perusal of these proceedings clearly shows that even the official respondents are not aware of the rule position particularly Rules 2-A and 4 of A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 and the Full Bench judgment of this court in G.Krishna Mohan Rao's case. However, these two impugned proceedings only goes to show that the claim of the petitioner for alteration of date of birth pursuant to the civil court decree obtained by her was negatived.

As already held this court under Article 226 of the Constitution of

India, cannot give a mandatory direction to the respondents to implement the order a civil court by declaring the impugned proceedings as illegal and arbitrary. Further as per the judgments referred to above and as per Rules 2-A and 4 of A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, such a claim of the petitioner for alternation of date of birth pursuant to a decree of a civil court is not maintainable. Further the impugned proceedings does not in any manner infringe the right of the petitioner conferred under any law and the same does not suffer from any legal infirmity. Hence, the second issue framed is also negatived.

In view of the above facts and circumstances and for the foregoing discussion, the writ petition is devoid of any merits and the same is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

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(G. CHANDRAIAH, J.)

August, 2005

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